

DEPARTMENT OF STATE REVENUE

Revenue Ruling ST-97-08

January 2, 1998

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Purchase of Market Surveys and Reports

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, Rule 45 IAC 2.2-4-2, IC 6-2.5-1-1, IC 6-2.5-1-2

The taxpayer requests the Department to rule on the application of sales/use tax to the purchase of market surveys and reports.

STATEMENT OF FACTS

The taxpayer is a nonprofit trade association, whose members include more than 20 commercial television broadcasters and 100 commercial radio broadcasters located throughout Indiana. As a regular part of their business, the taxpayer's members enter into agreements with market analysts for surveys of viewers or listeners in their respective viewing or listening markets. The members use the surveys for, among other things, selecting and scheduling programming designed to attract market segments which advertisers want to attract and hold, and for establishing rates for advertising time.

Under the typical contract, the analyst is obligated to gather statistical information by surveying selected samples of households within their customers' viewing or listening areas. Households generally keep diaries of viewing or listening of household members during a survey period. The analyst then interprets and collates the information and presents the results of the survey to customers in the form of a written report on a quarterly, monthly or daily basis.

The contract charges for surveys in any given area are dependent upon the number of customers in the viewing or listening area. The aggregate charges to all customers in an area pay for the analyst's costs of the survey for that area, plus a profit. The contracts generally do not contain any separate charge for the reports of the results of the surveys.

The reports furnished by market analysts, though varying in format, are essentially typeset computer printouts, sometimes in magazine format, containing numerous pages of analytical demographic data in table form. The basic format, content and appearance of the reports themselves would not justify charges even remotely approaching the typical cost of the agreements for the market surveys. Additional copies of market reports are typically available to the analysts' customers at nominal charges intended to cover the analysts' copying and shipping costs.

The reports are intended only to convey the information contained therein for the confidential use of the customers. Reports may not be loaned to or used by noncustomers. In some cases, title to the reports may not even be transferred to customers, who may be obligated to return or destroy reports after the expiration of the reports' useful lives.

DISCUSSION

IC 6-2.5-2-1 imposes sales tax on retail transactions (transfer of tangible personal property for consideration) made in Indiana. IC 6-2.5-3-2 imposes use tax on the storage, use or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction as defined for sales tax purposes, regardless of the location of that transaction or of the retail merchant making that transaction.

Here, there is a transfer of tangible personal property (market surveys and reports themselves) for consideration (retail transaction) between the taxpayer's members and the market analysts, hence, pursuant to the above referenced statutes the transaction is subject to sales/use tax to be collected by the market analysts. The charge for this retail transaction (sale or license to use) is only an insignificant part, however, of the total charge made by the market analysts. The largest part of the charge, by far, is made for the compilation, interpretation and collation of the data used for the market surveys and reports (a provision of a service). This being the case, it is likely that when the market analysts bill the taxpayer's members on a "lump sum" basis (all items of tangible personal property and services which are furnished under a single order or agreement for which a total combined charge or price is calculated) for the rendition of their services and the transfer of the market surveys and reports the marketing analysts fall within the ambit of Rule 45 IAC 2.2-4-2. Rule 45 IAC 2.2-4-2 states that where in conjunction with rendering services, a service provider, also, transfers tangible personal property for consideration, same will constitute a transaction of a retail merchant selling at retail unless:

1. The service provider is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

2. The tangible personal property is used or consumed as a necessary incident to the service;
3. The price charged for the tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
4. The service provider pays gross retail or use tax upon the tangible personal property at the time of acquisition.

If the market analysts are in complete compliance with all provisions of Rule 45 IAC 2.2-4-2 the market analysts transfer of tangible personal property for consideration is not defined as a retail transaction. The market analysts, therefore, would not be obligated to collect sales/use tax on the transfer of tangible personal property in conjunction with rendering services billed on a lump sum basis, however, the market analysts would be obligated to pay sales/use tax on tangible personal property transferred at the time of acquisition of same or when the property is brought into Indiana to be used in Indiana.

If the market analysts are not in complete compliance with all provisions of Rule 45 IAC 2.2-4-2 the market analyst would be obligated to collect sales/use tax upon the transfer of tangible personal property pursuant to IC 6-2.5-2-1 and IC 6-2.5-3-2. The market analysts would have to list separately on the invoice any charges for services not taxable, the selling price for tangible personal property which is taxable and the amount of sales/use tax due. If the charges for services not taxable and the charges for the transfer of tangible personal property are not separately stated on the invoice the market analysts would be obligated to collect sales/use tax on the total amount of the invoice as provided by IC 6-2.5-1-1 and IC 6-2.5-1-2.

RULING

The Department rules that if the market analysts are in complete compliance with all provisions of Rule 45 IAC 2.2-4-2 the purchase of market surveys and reports by the taxpayer's members billed on a lump sum basis would not be defined as a retail transaction. In this event, the market analysts would not be obligated to collect sales/use tax on the sale (license to use) of market surveys and reports, however, the market analysts would be obligated to pay sales/use tax on the paper, ink, etc. used to prepare the market surveys and reports at the time of acquisition of same or when the paper, ink, etc. are brought into Indiana to be used in Indiana.

If the market analysts are not in complete compliance with all provisions of Rule 45 IAC 2.2-4-2 the market analysts would be obligated to collect sales/use tax on the purchase of market surveys and reports by the taxpayer's members. The market analysts would have to list separately on the invoice any charges for their services rendered (compilation, interpretation and collation of data) which are not taxable, the selling price for the market surveys and reports themselves which are taxable and the amount of sales/use tax due. If the charges for services rendered and the charges for the market surveys and reports are not separately stated on the invoice the market analysts would be obligated to collect sales/use tax from the taxpayer's members on the total amount of the invoice.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.